

LICENSE AGREEMENT

BETWEEN
FIBERTOWER NETWORK SERVICES CORP.
AND
MONTGOMERY COUNTY, MARYLAND

DATED: 9/20 , 2008

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LICENSE AGREEMENT

THIS LICENSE AGREEMENT ("Agreement") is made this 20th day of September, 2008, by and between MONTGOMERY COUNTY, MARYLAND, 101 Monroe Street, Rockville, Maryland 20850, a body corporate and politic and a political subdivision of the State of Maryland (hereinafter referred to as the "COUNTY"), and FIBERTOWER NETWORK SERVICES CORP., a Delaware corporation (hereafter referred to as "LICENSEE"), (the LICENSEE and the COUNTY together the "Parties").

WITNESSETH

In consideration of the fees herein after reserved and other good and valuable covenants and obligations as hereinafter contained, the Parties agree as follows:

1. USE OF LICENSED PREMISES:

(a) COUNTY hereby grants to LICENSEE a non-exclusive license to occupy and use, subject to all of the terms and conditions herein, space for communications equipment listed in Exhibit A ("Equipment") to be installed on the existing tower located at Fire Station #31, 12100 Darnestown Road, in Montgomery County, State of Maryland as more particularly described on Exhibit B attached hereto and made part hereof ("Property"). The location of LICENSEE's Equipment on the existing tower and property in close proximity to the tower is generally described on Exhibit C attached hereto and made a part hereof as the licensed premises ("Licensed Premises"). No variation will be permitted without the prior written consent of the COUNTY.

(b) LICENSEE shall have the right of reasonable ingress and egress, to install and maintain utility wires, cables, conduits, circuit boxes, switches, amplifiers, antennas or other accessories and appurtenances for use of its Equipment, subject to the restrictions in this paragraph. LICENSEE, its employees, agents, independent contractors and subcontractors shall be entitled to access the Equipment and the Licensed Premises during normal business hours (9:00 A.M. to 5:00 P.M., Monday through Friday) and, in the event of an emergency after normal business hours or on the week end, provided that in all instances LICENSEE shall check-in at County Security @ (240) 777-6161 upon its arrival. In the event no authorized representative of COUNTY is available at check-in, access to the Equipment and Licensed Premises is denied.

(c) LICENSEE shall use the Licensed Premises for the purpose of transmission and reception of radio communication signals. In connection therewith, the LICENSEE may complete all work necessary to prepare the Licensed Premises for operation of the Equipment, including but not limited to installation of antennas, amplifiers, cables, equipments cabinets and appurtenances. With minimal disruption to COUNTY, all work on the Licensed Premises and improvements thereto, including the plans and specifications for such work, shall be at LICENSEE'S sole cost and expense, and shall be subject to prior review and written approval of the COUNTY. The LICENSEE will maintain the Licensed Premises in good condition.

(d) It is understood and agreed that the LICENSEE'S ability to use the Licensed Premises is contingent upon its obtaining after the execution date of this Agreement and

maintaining throughout the term of this Agreement all of certificates, permits, and any other approvals ("Approvals") required by any federal, state, or local authorities. In the event that any such application should be finally rejected or any Approval is canceled, expires, lapses or is otherwise withdrawn or terminated by government authority, or; if the LICENSEE in its sole discretion determines that it will be unable to use the Licensed Premises for its intended purposes due to technological reasons, the LICENSEE shall have the right to terminate this Agreement. Notice of the LICENSEE'S exercise of its right to terminate, shall be given to COUNTY in writing by certified mail, return receipt requested.

(e) LICENSEE represents and warrants that all information furnished to the COUNTY and required herein including all data contained in specification sheets shall be of sufficient detail to afford any tenant, future tenant, or licensee adequate information to ensure that any tenant or licensee avoids interference with LICENSEE'S equipment. COUNTY reserves the right to require the LICENSEE to make necessary adjustments to its equipment in the event LICENSEE'S equipment creates a material restriction in COUNTY'S ability to enter into agreements with tenants, potential tenants or licensees.

(f) Notwithstanding affixation to the Licensed Premises, title to the Equipment and all accessories and appurtenances associated therewith installed by LICENSEE shall remain property of the LICENSEE. The LICENSEE may remove all or part of the Equipment at its sole expense on or before the expiration or earlier termination of this Agreement and shall make any necessary repairs to the Licensed Premises, normal wear and tear excepted, necessitated by such removal.

(g) LICENSEE agrees to arrange for and to pay for all of the costs of providing separate metering for all utilities which serve its operation at the Property. Licensee shall pay the costs of all utility charges for the services provided to Licensee for its operation on the Property.

(h) Licensee shall provide an as-built engineer's drawing showing the location of its Equipment on the Licensed Premises and Property within ninety (90) days of full execution of this Agreement.

2. TERM:

(a) This Agreement shall be for a term of five (5) years ("Initial Term") commencing on the date (the "Commencement Date") which shall be the date first above written.

(b) This Agreement may be renewed by the mutual written agreement of the COUNTY and the LICENSEE for two (2) additional five (5) year terms ("Renewal Terms"), provided that the Parties hereto reach an agreement no later than six (6) calendar months prior to the end of the Initial Term or the then current Renewal Term on the License Fee of this Agreement for the next five (5) year term, subject to a determination by the LICENSOR that it can grant such an extension. COUNTY and LICENSEE shall execute a letter of agreement stating the commencement date of the then applicable Renewal Term.

(c) The termination date ("Termination Date") of the Agreement shall be the last day of the Initial Term, or the then current Renewal Term or the earlier date on which this Agreement is terminated in accordance with the provisions hereof.

3. LICENSEE FEE:

For the first license year, LICENSEE shall pay to the COUNTY an annualized license fee of Sixty Four Hundred Dollars (\$6,400.00). The first year license fee shall be paid annually upon the "Commencement Date" At the beginning of the second Agreement Year and at the beginning of every Agreement Year thereafter during the initial term, the then current annual License Fee shall be increased by three percent (3%) over the preceding annual License Fee. Should LICENSEE fail to submit a licensee fee in accordance with this Agreement, and if LICENSEE's failure continues for more than ten (10) calendar days after receipt of written notice from the COUNTY, LICENSEE shall pay to the COUNTY, in addition to and as a part of the license fee in question, a late penalty equal to five percent (5%) of the annual licensee fee. Should LICENSEE's failure continue for more than thirty (30) calendar days after a annual license fee becomes due and payable, COUNTY shall have the right to terminate this Agreement for default, and pursue any other legal remedies available to COUNTY at law or under the terms of this Agreement. The license fee shall be increased by 3.00% per year for each license year through the remainder of the Term, in accordance with the following schedule:

LICENSE YEAR	ANNUAL FEE	ANNUAL INCREASE
1	\$6,400.00	3%
2	\$6,592.00	3%
3	\$6,789.76	3%
4	\$6,993.45	3%
5	\$7,203.25	3%

Notwithstanding anything to the contrary, LICENSEE shall promptly pay a reimbursement License Fee in the amount of Ten Thousand One Hundred Thirty One Dollars (\$10,131.00) for nineteen months of operation on the Property. The LICENSEE shall make this payment within 30 days of execution of this Agreement, which shall cover the License Fee for the years 2007 and a portion of 2008.. This fee is paid as the reimbursement for the presence of the equipment listed in Exhibit "A" during the years of 2007 and 2008 while LICENSEE occupied the Property without permission or an agreement with the COUNTY.

4. LICENSEE INDEMNIFICATION:

Except to the extent caused by the negligence or intentional misconduct of COUNTY, its agents, employees or contractors, LICENSEE hereby agrees, covenants, and warrants to protect,

indemnify, and hold COUNTY and its respective officers, members, employees, agents and invitees (the "Indemnified Parties") harmless from and against all liabilities, actions, damages, claims, demands, judgments, losses, costs, expenses, liens, encumbrances, suits or actions and reasonable attorneys' fees, and the cost of the defense of the Indemnified Parties in any suit, including appeals, arising out of (i) construction work and alterations and related activities undertaken by LICENSEE pursuant to this Agreement, (ii) the negligence or willful misconduct of LICENSEE, or its agents, employees, contractors and invitees on or about the Property or Licensed Premises, (iii) the use or occupancy of the Property or Licensed Premises by the LICENSEE or its agents, employees or contractors, (iv) any breach by LICENSEE, or anyone acting through or on behalf of LICENSEE of any of its obligations hereunder, and (v) damages, including consequential damages from an occurrence involving either bodily injury or property damage, caused by LICENSEE.

5. LICENSEE INSURANCE:

Commencing on the date upon which COUNTY delivers the Premises to LICENSEE and at all times thereafter, LICENSEE shall cause to be carried and maintained, at no cost to COUNTY, the insurance coverages attached hereto as Exhibit C. COUNTY may change the types of required coverages from time to time as circumstances and changes in use of the Property warrant.

6. COUNTY LIABILITY:

Any obligation or liability of the COUNTY arising in any way from this Agreement is subject to, limited by, and contingent upon the appropriation and availability of funds, as well as the damage caps and notice requirements stated in the Maryland Local Government Tort Claims Act, currently found at Maryland Code Annotated, Courts & Judicial Proceedings Art. §§5-301 et seq. (the "LGTC"). Any indemnification given by the County in this Agreement is not intended to create any rights in any third parties.

7. COUNTY INSURANCE:

The COUNTY shall maintain during the term of this Agreement and until all of the COUNTY'S obligations which survive termination of this Agreement have been completed, a policy of public liability and property damage insurance as per §§ 20-37 of the Montgomery County Code, (2004), as amended, which regulates the Montgomery County Self-Insurance Program. Montgomery County may self-insure. The COUNTY shall evidence limits of insurability for general liability coverage in amounts of \$500,000 aggregate and \$200,000 each occurrence, and \$20,000 per person, \$40,000 per accident for bodily injury and \$15,000 for property damage for automobile liability and State of Maryland statutory limits for workman's compensation. These are the maximum limits of liability for which the Montgomery County Self-Insurance Program is responsible, as determined by the LGTCA, Md. Ann. Code §§ 5-301, et seq.

8. RIGHT OF ENTRY:

(a) Routine Repairs and Inspection: LICENSEE shall permit COUNTY, its agents or employees, at reasonable times and upon reasonable prior notice (not less than forty eight (48) hours' prior notice) to enter the Licensed Premises without charge to: (1) examine, inspect and protect the Licensed Premises; and (2) to perform maintenance and repairs necessary to protect the Property.

(b) Emergency Access: In cases of emergency involving imminent risk of injury or death to persons or damage to property, COUNTY, its agents or employees, without prior notice to LICENSEE, may enter the Licensed Premises, however, COUNTY will attempt, but is not required, to notify LICENSEE of any such entry under this Article 8(b) as soon as is practicable under the circumstances.

(c) Nothing in this Article 8 shall be construed as a limitation on the police powers of COUNTY, nor a limitation on any entry by COUNTY pursuant to the exercise of its police powers.

9. SURRENDER OF POSSESSION:

This Agreement shall terminate on the Termination Date without the necessity of notice from either COUNTY or LICENSEE. Upon the Termination Date or earlier termination of this Agreement, LICENSEE shall (i) quit and surrender to COUNTY the Licensed Premises, in good order and condition, ordinary wear and tear excepted, with utilities capped off; (ii) and remove LICENSEE's Equipment and facilities. If LICENSEE's Equipment and facilities are not removed from the Licensed Premises within 72 hours after the Termination Date, the property remaining will be deemed abandoned and will become the property of COUNTY, and COUNTY may have it removed and disposed of at LICENSEE's expense, with no liability of County to return such Equipment to Licensee. At the time of termination of this Agreement and at the request of COUNTY or LICENSEE, the Parties must participate in a walk-through to inspect the Licensed Premises.

10. ENTIRE AGREEMENT:

It is agreed and understood that this Agreement contains all agreements, promises, and understandings between COUNTY and LICENSEE, and any addition, variation, or modification to this Agreement shall be void and ineffective unless made in writing and signed by the Parties.

11. COMPLIANCE WITH LAWS:

LICENSEE shall comply with all statutes, laws, rules, orders, regulations and ordinances (collectively "Laws") affecting the use or operation of the Licensed Premises. In no event shall LICENSEE use the Licensed Premises for purposes which are prohibited by zoning or similar laws or regulations. LICENSEE acknowledges and agrees it is solely responsible for determining if its

use of the Licensed Premises complies with the applicable zoning regulations, and that COUNTY makes no representation (explicit or implied) concerning such zoning regulations. LICENSEE shall not use the Licensed Premises in any manner that causes a violation of any environmental laws or regulations or that could create environmental liabilities under Federal, State or local environmental protection laws.

12. CHOICE OF LAW:

This Agreement and the performances thereof shall be governed, interpreted, construed and regulated by the laws of the State of Maryland.

13. CHOICE OF FORUM:

Any action involving a dispute relating in any manner to this Agreement, the use or occupancy of the Leased Premises, and/or any claim of injury or damage shall be filed and adjudicated solely in Montgomery County, Maryland.

14. ASSIGNMENT AND OTHER TRANSFER:

(a) Under Common Control: LICENSEE may assign, without consent, its interest to its parent company, any subsidiary or affiliate of it or its parent company or to any successor-in-interest or entity acquiring fifty-one percent (51%) or more of its stock or assets. Assignee shall assume all of Licensee's obligations herein.

(b) Assignment Requiring Consent: Licensee shall not assign this Agreement without the prior written consent of the County to an assignee not meeting the criteria of Article 14(a), which consent shall not be unreasonably conditioned, withheld or delayed. Any assignment consented to by the County shall not relieve the Licensee from any of its obligations under this Agreement, and such consent by the County shall not be effective unless and until (i) Licensee gives written notice thereof to the County, which notice shall state the name and address of the proposed assignee, and identify the nature and character of the proposed use of the Licensed Premises by assignee, (ii) such assignee shall deliver to the County a written agreement in form and substance satisfactory to the County pursuant to which such assignee assumes all of the obligations and liabilities of the Licensee hereunder, and (iii) Licensee shall deliver to the County a copy of the proposed assignment agreement. Licensee shall also provide any additional information the County reasonably requests regarding such proposed assignment. Any assignment without the County's written consent may be declared null and void by the County and, at the County's election, constitute an Event of Default hereunder.

(c) Other Transfer: This Agreement may not be sold or transferred and the LICENSEE shall not sublet or permit any other party to use the Licensed Premises or Property or any of the LICENSEE'S Equipment on the Property.

15. NOTICES.

All notices hereunder must be in writing and shall be deemed validly given if hand delivered to the other party or if sent by certified mail, return receipt requested, addressed as follows (or such other address as the party to be notified has designated to the sender by like notice):

LICENSEE:

FiberTower Network Services Corp.
720 Avenue F, Suite 109
Plano, Texas 75074
Attn: Real Estate

COUNTY:

Montgomery County, Maryland
Department of Public Works and Trans
Office of Real Estate
101 Monroe Street, 10th Floor
Rockville, Maryland 20850

With a copy that does not constitute notice to
Office of the County Attorney
for Montgomery County, Maryland
101 Monroe Street, 3rd Floor
Rockville, Maryland 20850
Attn: County Attorney

16. RELATIONSHIP OF THE PARTIES:

It is expressly understood that the COUNTY shall not be construed or held to be a partner, co-venturer, agent or associate of the LICENSEE; it being expressly understood that the relationship between the Parties hereto is and shall remain at all time that of the COUNTY and LICENSEE.

17. INTERFERENCE:

The LICENSEE shall operate its Equipment at all times in a manner that will not interfere with radio and/or electrical equipment of any existing tenant or licensee of the Property. If any such interference occurs, in the reasonable assessment of the COUNTY, based upon verifiable data or testing, and is not corrected by the LICENSEE within forty-eight (48) hours after written notification, the COUNTY shall have the right to require the LICENSEE to shut down and repair the LICENSEE'S Equipment, except for brief tests (not to exceed 5-10 minutes every hour) to eliminate such interference. The COUNTY shall not be held responsible for any interference to the LICENSEE'S Equipment or operations, provided the COUNTY exercises due care and otherwise complies with this Agreement. Similarly, COUNTY agrees that after execution of this Agreement, any tenants or licensees of the Property will be permitted to install such radio equipment that is of the type and frequency that will not cause interference to the LICENSEE. In the event future equipment of any tenants or licensees of the Property causes interference to the LICENSEE and is not corrected by the interfering party within twenty-four (24) hours of notification, the COUNTY

shall require the interfering party to immediately shut down the interfering equipment until the interference is corrected, except for intermittent testing.

18. EVENTS OF DEFAULT:

Either Party shall be considered in default of Agreement upon the occurrence of any of the following:

(a) Failure to perform any term, covenant or condition of this Agreement and the continuance thereof for fifteen (15) days following receipt of notice from the non-defaulting party with respect to a default which may be cured solely by the payment of money or for fifteen (15) days following receipt of written notice from the non-defaulting party specifying said failure with respect to a default which may not be cured solely by the payment of money. In either event, the non-defaulting Party may pursue any remedies available to it against the defaulting party under applicable law, including but not limited to, the right to terminate this Agreement.

(b) If the non-monetary default may not be reasonably cured within a fifteen (15) day period, this Agreement may not be terminated if the defaulting Party commences action to cure the default within such fifteen (15) day period and proceeds with due diligence to fully cure the default.

(c) In the event that the LICENSEE shall be found in default and shall fail to cure such default after notice given as set forth hereinabove, then the LICENSEE'S right to the Licensed Premises shall automatically be revoked.

19. HAZARDOUS MATERIALS:

LICENSEE warrants and represents that it will be solely liable for the clean-up and removal of hazardous substances that it generates, or causes to be placed on the Property and Licensed Premises as required by law. COUNTY represents that to its knowledge, the Property and Licensed Premises are free from any unlawful environmental contamination as of the date of execution of this Agreement.

20. NON DISCRIMINATION:

LICENSEE agrees to comply with the non-discrimination in employment policies in County contracts as required in Sections 11B-33 and 27-19 of the Montgomery County Code (2004), as amended, as well as all other federal, state and local laws, rules and regulations regarding employment discrimination. By signing this Agreement, LICENSEE assures COUNTY that in accordance with applicable law, it does not, and agrees that it shall not engage in any employment discrimination in violation of the above sections of the Montgomery County Code as well as any other federal, state or local laws, rules and regulations.

21. ETHICS REQUIREMENT:

LICENSEE understands and agrees that unless authorized pursuant to Section 11B 52 and Chapter 19A of the Montgomery County Code (2004), as amended, that it is unlawful for any person or entity transacting business with the County to employ a public employee contemporaneous with his or her public employment.

22. CONTRACT SOLICITATION:

LICENSEE represents that it has not retained anyone to solicit or secure this Agreement from the COUNTY upon an agreement or understanding for a commission, percentage, brokerage or contingent fee, except for bona fide employees of bona fide established, licensed, commercial selling or leasing agencies (the "Broker") maintained by the LICENSEE for the purpose of securing business or an attorney rendering professional legal services consistent with the canons of ethics of the profession. LICENSEE is responsible for paying any Broker's fees or commissions for any Broker with whom LICENSEE has any contract or agreement and for paying all of LICENSEE's attorneys' fees in connection with the negotiation of this Agreement.

23. RESIDENT AGENT:

The resident agent for the LICENSEE is: Corporation Trust Incorporated, 300 East Lombard Street, Baltimore, Maryland.

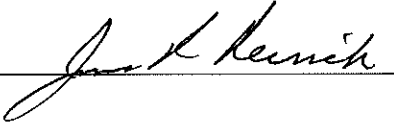
24. TERMINATION:

This Agreement and all rights and obligations hereunder may be terminated by the COUNTY, for any reason, at any time and at no cost to the COUNTY, whenever the Chief Administrative Officer shall determine that termination of this Agreement is in the best interest of the COUNTY. Such termination shall be effective to LICENSEE on the later to occur of (i) one hundred eight (180) days after delivery to LICENSEE of written notice, or (ii) the date specified in a written notice as the termination date.

[SIGNATURE PAGE TO FOLLOW]

IN WITNESS WHEREOF, the Parties hereto have set their hand and affixed their respective seals the day and year first above written.

WITNESS:

By: 

LICENSEE:


FIBERTOWER NETWORK SERVICES
CORP.

By: 
Geoffrey T. Kay

Title: Director, National Real Estate

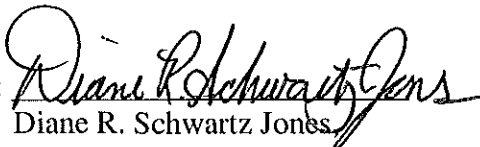
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WITNESS:

By: 

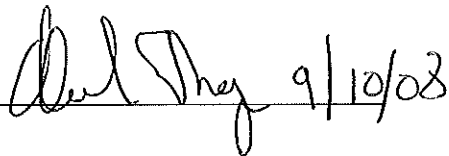
COUNTY:

Montgomery County:

By: 
Diane R. Schwartz Jones
Assistant
Chief Administrative Officer

Date: 9/20/08

Approved for legal form and legality:
Office of the County Attorney

By:  9/10/08

Recommended:


By: 
Cynthia Brenneman, Director
Office of Real Estate

EXHIBIT A

COMMUNICATIONS EQUIPMENT DESCRIPTION

<u>Item</u>	<u>Description</u>	<u>Quantity</u>
1	4' x 4' concrete pad	1
2	Weather proof Equipment Cabinet	1
3	3' microwave dish antenna	2

Also, miscellaneous accessories and hardware necessary for installation of equipment.



EXHIBIT C

LICENSEE INSURANCE REQUIREMENTS

License Agreement for Fibertower Network Services Corporation Communications, Inc to install and maintain communications equipment on the monopole located at Fire Station #31, 12100 Darnestown Road, Montgomery County Maryland.

LICENSEE must obtain and maintain, during the entire time that this License remains effective,

1) a policy of public liability insurance with one million dollars (\$1,000,000) per occurrence and one million dollars (\$1,000,000) aggregate for bodily injury and property damage including fire legal liability, premises and operations, independent contractors, personal injury and broad form property damage.

2) a policy providing workers compensation liability meeting all statutory requirements of the State of Maryland, and the following minimum Employers' Liability limits: Bodily Injury by Accident - \$100,000 ; Bodily Injury by Disease - \$500,000 ; Bodily Injury by Disease - \$100,000 each employee

3) an automobile liability policy with a minimum limit of liability of one million dollars (\$1,000,000), combined single limit, for bodily injury and property damage coverage per occurrence including the following: owned automobiles, hired automobiles, non-owned automobiles

LICENSEE must deliver to the COUNTY a certificate(s) of insurance issued by insurance companies licensed in the State of Maryland, evidencing the coverage herein above described within thirty (30) days from the execution of this Agreement. The certification (certificate holder) must be issued to Montgomery County, Maryland, Department of General Services, Office of Real Estate, 101 Monroe Street, 10th Floor, Rockville, Maryland 20850. The liability policies must name Montgomery County, Maryland as an additional insured. All policies must provide the County with a minimum of forty-five days notice of material amendment or cancellation. The County may from time to time reasonably modify the limits and coverages required under this License after a ninety (90) days notice of change in it's insurance requirements.